

AMENDED IN SENATE MARCH 24, 2003

SENATE BILL

No. 344

Introduced by Senators Speier and ~~Florez~~, Florez, and Kuehl

February 19, 2003

An act to amend Sections 12340.2, 12360, 12640.02, 12640.07, and 12640.10 *of the Insurance Code*, relating to mortgage insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 344, as amended, Speier. Title insurance: mortgage guaranty insurance.

Existing law provides that an insurer that transacts any class of insurance other than title insurance is not eligible for the issuance of a certificate of authority to transact title insurance.

This bill would allow a title insurance policy to include coverage for the risks covered by mortgage guaranty insurance, as defined, if the policy is issued in connection with a refinancing transaction or a transaction that imposes a junior lien on real property after the borrower's initial purchase of the property. *It would allow the Insurance Commissioner to adopt regulations implementing this provision.*

Existing law defines "mortgage guaranty insurance" and requires that insurers offering this insurance meet specified licensing and regulatory requirements, including a requirement that they not transact other classes of insurance.

This bill would provide that "mortgage guaranty insurance" includes insurance against financial loss by reason of nonpayment of specified sums if, among other conditions, a portion of the loss is also due to a failure of the lien to have the priority contemplated by the lender because of liens unknown to or undisclosed by the borrower. The bill would provide that coverage of this risk shall not be deemed to

constitute title insurance or violate the requirement that mortgage guaranty insurers not transact other forms of insurance. *It would set forth allowable uses of credit information in connection with this insurance, would require the submission of rates and forms to the commissioner, and would allow the commissioner to adopt regulations implementing these and other related provisions.*

Existing law defines “authorized real estate security” for the purposes of specified restrictions on the issuance of mortgage guaranty insurance. Existing law includes within that definition real estate securing a note or other evidence of indebtedness by a junior lien that, when combined with all existing mortgage loan amounts, does not exceed a total indebtedness equal to 103% of the fair market value of the real estate at the time the junior loan is made.

This bill would require that this 103% limitation on the property that may be considered “authorized real estate security” be determined without regard to any lien unknown to the lender.

Existing law precludes an insurer from transacting certain classes of mortgage guaranty insurance if it transacts a class of mortgage guaranty insurance covering junior liens on residential property.

This bill would add coverage of financial loss by reason of nonpayment and loss of priority due to unknown or undisclosed liens to the classes of insurance precluded to one of these insurers. It would allow an insurer to transact each class of mortgage guaranty insurance in connection with real property refinancing transactions or transactions imposing a junior lien on real property after the borrower’s initial purchase of the property.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12340.2 of the Insurance Code is
- 2 amended to read:
- 3 12340.2. Except as provided in subdivision (b) of Section
- 4 12360, “title policy” means any written instrument or contract by
- 5 means of which title insurance liability is assumed.
- 6 SEC. 2. Section 12360 of the Insurance Code is amended to
- 7 read:
- 8 12360. (a) Except as provided in subdivision (b), an insurer
- 9 that anywhere in the United States transacts any class of insurance

1 other than title insurance is not eligible for the issuance of a
2 certificate of authority to transact title insurance in this state nor
3 for the renewal thereof.

4 (b) (1) A title policy may include coverage for the risks
5 covered by mortgage guaranty insurance specified in *paragraph*
6 *(5) of subdivision (a) of* Section 12640.02 if the policy is issued in
7 connection with a refinancing transaction or a transaction that
8 imposes a junior lien on real property after the borrower's initial
9 purchase of the property.

10 (2) *The commissioner may adopt any regulation that he or she*
11 *deems necessary to implement paragraph (1).*

12 SEC. 3. Section 12640.02 of the Insurance Code is amended
13 to read:

14 12640.02. The definitions set forth in this article shall govern
15 the construction of the terms used in this chapter but shall not affect
16 any other provisions of this code.

17 (a) "Mortgage guaranty insurance" means:

18 (1) Insurance against financial loss by reason of nonpayment of
19 principal, interest, and other sums agreed to be paid under the
20 terms of any note or bond or other evidence of indebtedness
21 secured by a mortgage, deed of trust, or other instrument
22 constituting a first lien or charge on real estate, provided the
23 improvement on the real estate is a residential building or a
24 condominium unit or buildings designed for occupancy by not
25 more than four families.

26 (2) Insurance against financial loss by reason of nonpayment of
27 principal, interest, and other sums agreed to be paid under the
28 terms of any note or bond or other evidence of indebtedness
29 secured by a mortgage, deed of trust, or other instrument
30 constituting a junior lien or charge on real estate, provided the
31 improvement on the real estate is a residential building or a
32 condominium unit or building designed for occupancy by not
33 more than four families.

34 (3) Insurance against financial loss by reason of nonpayment of
35 principal, interest and other sums agreed to be paid under the terms
36 of any note or bond or other evidence of indebtedness secured by
37 a mortgage, deed of trust, or other instrument constituting a lien
38 or charge on real estate, provided the improvement on the real
39 estate is a building or buildings designed for occupancy by five or

1 more families or designed to be occupied for industrial or
2 commercial purposes.

3 (4) Insurance against financial loss by reason of nonpayment of
4 rent and other sums agreed to be paid under the terms of a written
5 lease for the possession, use or occupancy of real estate, provided
6 the improvement on the real estate is a building or buildings
7 designed to be occupied for industrial or commercial purposes.

8 (5) (A) Insurance against financial loss by reason of
9 nonpayment of principal, interest, and other sums agreed to be paid
10 under the terms of any note or bond or other evidence of
11 indebtedness secured by a mortgage, deed of trust, or other
12 instrument constituting a lien or charge on real estate, if a portion
13 of the loss is due to a failure of the lien to have the priority
14 contemplated by the lender because of liens unknown to or
15 undisclosed by the borrower, if the insurance is offered in
16 connection with a refinancing transaction or a transaction that
17 imposes a junior lien on real property after the borrower's initial
18 purchase of the property, and if the improvement on the real estate
19 is a residential building or a condominium unit or buildings
20 designed for occupancy by not more than four families. This
21 coverage shall not be deemed to constitute title insurance or to
22 violate Section 12640.07 when written by an insurer authorized to
23 transact mortgage guaranty insurance in this state. ~~Subject~~

24 (B) *Subject* to all applicable laws regarding fair consumer
25 credit practices, a licensed mortgage guaranty insurer may conduct
26 credit checks of borrowers, verify property ownership, and engage
27 in any lawful underwriting activity. *However, notwithstanding any*
28 *other provision of law, a licensed mortgage guaranty insurer may*
29 *not use credit scores or credit scoring models to deny eligibility or*
30 *set a price for coverage under a policy described in subparagraph*
31 (A).

32 (C) *A licensed mortgage guaranty insurer shall submit to the*
33 *commissioner prior to their use all rates and forms used in*
34 *connection with the insurance described in subparagraph (A).*

35 (D) *The commissioner may adopt any regulations that he or she*
36 *deems necessary to implement this paragraph or any other*
37 *provision of this code relating to the insurance described in*
38 *subparagraph (A).*

39 (b) (1) "Authorized real estate security" for the purposes of
40 this chapter means either (A) real estate, plus the balance of any



1 pledged cash account, pledged borrower retirement account, or
 2 collateralized guaranty agreement contracted for by parents, blood
 3 relatives, employers, or nonprofit corporations for the benefit of
 4 the borrower; or (B) real estate securing a note, bond, or other
 5 evidence of indebtedness by a junior mortgage, deed of trust, or
 6 other instrument constituting a junior lien or charge on the real
 7 estate, that, when combined with all existing mortgage loan
 8 amounts, does not exceed a total indebtedness equal to 103 percent
 9 of the fair market value of the real estate at the time the junior loan
 10 is made, determined without regard to any lien unknown to the
 11 lender, provided that, in determining the foregoing 103 percent
 12 limitation, if the loan securing the junior lien is an equity line of
 13 credit loan, the full amount of the line of credit to be secured by
 14 the junior lien shall be considered the amount of the loan, and
 15 further provided, in all cases that both of the following are true:

16 (i) The real estate loan secured in this manner is any type of loan
 17 which a bank, savings and loan association, mortgage banker,
 18 credit union, mortgage loan broker, or an insurance company,
 19 which is supervised and regulated by a department of this state or
 20 an agency of the federal government, is authorized to make or
 21 arrange, or would be authorized to make or arrange, disregarding
 22 any requirement applicable to an institution that the amount of the
 23 loan not exceed a certain percentage of the value of the real estate.

24 (ii) The improvement on the real estate is a building or
 25 buildings designed for occupancy as specified by paragraphs (1),
 26 (2), and (3) of subdivision (a).

27 (C) The lien on the real estate may be subject and subordinate
 28 to the following:

29 (i) The lien of any public bond, assessment, or tax, when no
 30 installment, call, or payment of or under the bond, assessment, or
 31 tax is delinquent.

32 (ii) Outstanding mineral, oil or timber rights, rights-of-way,
 33 easements or rights-of-way or support, sewer rights, building
 34 restrictions or other restrictions or covenants, conditions or
 35 regulations of use, or outstanding leases upon the real property
 36 under which rents or profits are reserved to the owner thereof.

37 (2) “Authorized real estate security” also means a stock or
 38 membership certificate issued to a tenant-stockholder or
 39 resident-member by a completed fee simple cooperative housing
 40 corporation, as defined in Section 17265 of the Revenue and

1 Taxation Code and Section 216 of the United States Internal
2 Revenue Code.

3 (c) “Contingency reserve” means an additional premium
4 reserve established for the protection of policyholders against the
5 effect of adverse economic cycles.

6 (d) “Policyholders surplus” means the aggregate of capital,
7 surplus and contingency reserve.

8 SEC. 4. Section 12640.07 of the Insurance Code is amended
9 to read:

10 12640.07. (a) Except as provided in subdivision (b) of
11 Section 12360, mortgage guaranty insurance may be transacted in
12 this state only by a stock or mutual casualty insurer holding a
13 certificate of authority for the transaction of the insurance pursuant
14 to this chapter, and shall be written only to insure either of the
15 following:

16 (1) Loans secured by first liens on authorized real estate
17 securities not exceeding, at the time the loan is made, 103 percent
18 of the fair market value of the authorized real estate security, as
19 defined in subparagraph (A) of paragraph (1) of subdivision (b) of
20 Section 12640.02.

21 (2) Loans secured by junior liens, as defined in subparagraph
22 (B) of paragraph (1) of subdivision (b) of Section 12640.02.

23 (b) Any reciprocal insurer engaging in this type of business
24 shall be bound by all provisions of this chapter, including the
25 requirements as to paid-in capital and paid-in surplus.

26 SEC. 5. Section 12640.10 of the Insurance Code is amended
27 to read:

28 12640.10. (a) An insurer that anywhere transacts any class of
29 insurance other than mortgage guaranty insurance defined in
30 paragraphs (1), (3), (4), and (5) of subdivision (a) of Section
31 12640.02 is not eligible for the issuance of a certificate of authority
32 to transact those classes of mortgage guaranty insurance in this
33 state nor for the renewal thereof. An insurer with a certificate of
34 authority to transact the business of credit insurance in this state
35 may also transact the business of mortgage guaranty insurance as
36 defined in paragraph (2) of subdivision (a) of Section 12640.02,
37 provided the insurer has received the written permission of the
38 commissioner.

39 (b) An insurer that anywhere transacts the classes of insurance
40 defined in paragraphs (2), (3) and (4) of subdivision (a) of Section



1 12640.02 is not eligible for the issuance of a certificate of authority
2 to transact in this state the class of mortgage guaranty insurance
3 defined in paragraph (1) of subdivision (a) of Section 12640.02,
4 unless the insurer transacts those classes of insurance only in
5 connection with real property refinancing transactions or
6 transactions imposing a junior lien on real property after the
7 borrower's initial purchase of the property.

8 (c) An insurer authorized to transact the class of insurance
9 defined in paragraph (2) of subdivision (a) of Section 12640.02
10 shall maintain segregated accounts with respect to that insurance
11 in the following manner if it anywhere transacts any other class of
12 insurance:

13 (1) The minimum paid in capital and surplus required by
14 Section 12640.03 and the reserves required to be established
15 pursuant to Sections 12640.04 and 12640.16 shall be contributed
16 to and maintained in the account.

17 (2) The income and assets attributable to the segregated
18 account shall continuously remain identifiable with the particular
19 account, but, unless the commissioner so orders, the assets need
20 not be kept physically separate from other assets of the insurer. The
21 income, gains and losses, whether or not realized, from assets
22 attributable to the segregated account shall be credited to or
23 charged against the account without regard to other income, gains
24 or losses of the insurer.

25 (3) Assets attributable to the segregated account shall not be
26 chargeable with any liabilities arising out of any other business of
27 the insurer, and any assets not attributable to the account shall not
28 be chargeable with any liabilities arising out of it.

29 (4) The segregated account shall be deemed an insurer for
30 purposes of any proceedings in cases of insolvency and
31 delinquency instituted, pursuant to applicable provisions of this
32 code; provided, however, that such account shall not be subject to
33 the provisions of Article 14.2 (commencing with Section 1063) of
34 Chapter 1 of Part 2 of Division 1.

35 (5) Assets allocated to the segregated account are the property
36 of the insurer which shall not hold itself out to be a trustee of the
37 assets.

38 (6) An insurer may own a particular asset in determinate
39 proportions for the segregated account or for its general account.

1 (7) An insurer may, by an identifiable act, transfer assets for
2 fair consideration between the segregated account and its general
3 account.

4 (d) The written permission described in subdivision (a) shall be
5 obtained by filing an application with the commissioner on a form
6 prescribed by the commissioner accompanied by any additional
7 information concerning the insurer, its conditions, and affairs, as
8 the commissioner may require. A fee of one thousand five hundred
9 dollars (\$1,500) shall be paid in advance to the department for the
10 filing of the application.

